

Ranking Member John Thune
Questions for the Record
Nomination of Mr. Michael O’Rielly to be
Commissioner, Federal Communications Commission
Senate Committee on Commerce, Science and Transportation
Hearing on September 18, 2013

1. Mr. O’Rielly, rural Americans are facing significant call completion problems. I’m troubled by one study indicating that, during one period between 2011 and 2012, the incompleteness rate was 13 times higher in rural areas than in non-rural areas. Calls that fail to be completed result in rural businesses losing customers, and family members in rural areas being cut off from each other. As you can imagine, this is particularly a concern in states like South Dakota. That is why I’m pleased by the Federal Communications Commission’s recent order and notice of proposed rulemaking that seeks to enhance the FCC’s ability to investigate this problem, among other things. This action is overdue.

How familiar are you with the call completion problems being experienced in many rural areas of the country, and would you commit to using your authority as a commissioner to address such problems, should you be confirmed?

While I am not privy to the details of the item, I am aware that Acting Chairwoman Clyburn recently circulated an order and further notice of proposed rulemaking on this matter. I would tend to agree with the comments made by Chairman-designate Wheeler at his confirmation hearing that this issue appears to be one of enforcement. To be clear, I believe that violations of the FCC’s rules should be enforced vigorously and if the Commission needs to take additional enforcement action in this space I would be supportive.

2. Mr. O’Rielly, as you know, like other members of this Committee, I represent a state with significant rural areas, and I am firmly committed to expanding telecommunications opportunities for people in my state.

Should you be confirmed as a commissioner, how will you approach the challenges rural America faces with respect to communications issues?

During my many years working on communications policy, I have seen the importance of expanding communications services to all Americans. Having worked for several Senators in states with very rural areas, I am sympathetic to the challenges faced by rural consumers and will work to ensure the Commission focuses appropriate attention to these issues.

3. Mr. O’Rielly, as you know, Universal Service Fund reforms have had a significant impact on states like South Dakota that have large rural areas. Many in Congress have expressed concerns about the need to improve the FCC’s reforms, particularly with regard to the

Quantile Regression Analysis model used to determine recoverable costs for smaller rural carriers, to bring greater regulatory certainty for rate-of-return carriers.

Do you believe it is important to provide rural broadband providers with greater regulatory certainty in the USF program? If so, do you have any thoughts on how to achieve that?

I am aware that the Commission has made several modifications to the USF reform order to address concerns expressed by rural carriers. To the extent that additional modifications or corrections to the FCC's Universal Service Reform Order are necessary and would provide greater certainty to recipients, I would be open to reviewing any such suggested changes.

4. Mr. O'Rielly, as you know, one of the President's key initiatives is to make 500 megahertz of federal spectrum available for commercial use. While more spectrum is absolutely necessary, I believe that we need to focus on the quality of that spectrum, not just the quantity. In particular, the 1755-1780 megahertz band is one that many of my colleagues and I would like to see opened up for commercial use.

Should you be confirmed, will you work with me and this Committee to find ways, along with National Telecommunications & Information Administration (NTIA) and other federal agencies, to free up more federal spectrum for commercial use in a timely manner, particularly with regard to the 1755-1780 megahertz band?

Yes. As I stated during my confirmation hearing, I believe we should examine the use of federal spectrum to ensure it is being used as efficiently as possible and should look at all possible incentives to achieve this objective. Regarding the 1755-1780 band, the Department of Defense (DoD) has indicated it is able to exit this band and has submitted a transition plan which is currently under discussion with federal and industry stakeholders. It remains to be seen whether the alternative band DoD identified and would like to utilize is the most appropriate place for relocation. In any event, the Commission should work to auction this band in a pairing with the auction required by statute of the 2155-2180 band.

5. Deployment of communications infrastructure is critical to achieving universal service and economic growth. Congress addressed this reality by providing traditional communications service providers a statutory right to attach to utility poles under Section 224 of the Communications Act. However, the FCC has not provided broadband-only providers the same ability. Do you believe the FCC has authority to extend pole attachment rights to broadband-only providers?

The FCC's implementation of the pole attachment provision created by the Telecommunications Act of 1996 has generated numerous controversies and legal challenges since enactment. At the same time, they have proven to be valuable in extending certain communications services and competition to more Americans. It is my understanding that the Commission has not squarely addressed its authority with respect to broadband providers and broadband services in this context, so it

remains an open question. To the extent that a determination is made that pole attachment rights should be extended to broadband-only providers and the Commission does not have authority to do so, the Commission should seek such authority from the Committee.

6. Should you be confirmed, will you commit to visit South Dakota or a similarly situated rural state within the first year of your tenure as a Commissioner to see firsthand some of the communications challenges facing rural communities?

If I am confirmed, I would be pleased to visit South Dakota during my term and certainly visit a similarly situated rural state within one year of confirmation.

7. The FCC is the guardian of decency on the public airwaves yet it has not brought an enforcement action against any broadcaster in more than four years. Should you be confirmed, what actions would you take on the Commission to seek to enforce the current decency law?

The Commission has an obligation to vigorously enforce all of its rules. If I am confirmed, I will work with my fellow commissioners to ensure that occurs, including as it pertains to its broadcast decency rules. I would begin by seeking information on the volume and types of complaints the Commission has recently received as well as a review of comments received in response to the Commission's most recent inquiry on the issue.